
**An Analysis and Evaluation of
Certificate of Need Regulation in Maryland**

Hospice Services

*Response to Written Comments on the
Staff Recommendation*

MARYLAND HEALTH CARE COMMISSION

December 12, 2000

An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Hospice Services

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I. Introduction

The Maryland Health Care Commission's working paper, titled *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Hospice Services*, was developed as one in a series of working papers examining major policy issues of the Certificate of Need (CON) process, as required by House Bill 995 (1999). The paper presented the following nine alternative regulatory strategies to the current Certificate of Need Requirement to establish hospice service:

- Option 1: Maintain Existing Certificate of Need Program Regulation
- Option 2: Expanded CON Program Regulation (Require CON or Exemption from CON to Close an Existing Program)
- Option 3: Retain CON Review, but Project Need and Consider Applications on a Regional, not a Jurisdictional Basis
- Option 4: Partial Deregulation-Regulate Only Inpatient Hospice Services and Deregulate Home-Based Services
- Option 5: Partial Deregulation - Regulate Only Sole/Two Provider Jurisdictions
- Option 6: Deregulation with Creation of a Data Collection and Reporting Model
- Option 7: Expand Ombudsman Role to Include Community-Based Services
- Option 8: Deregulation of Hospice with Expanded Licensure Standards and Oversight
- Option 9: Deregulation of Hospice Services from Certificate of Need Review

The Commission released the Working Paper on September 15, 2000, and invited interested organizations and individuals to submit written comments by October 16, 2000. The Commission received comments from 13 organizations. The Commission's staff evaluated the public comments that were received on the Working Paper and determined that the majority of the comments supported maintaining current CON regulation for hospice.

On November 21, 2000, staff recommended that the Commission accept Option 1, Maintain Existing Certificate of Need Program Regulation. The Commission invited interested organizations and individuals to submit written comments on *An Analysis and Evaluation of Certificate of Need Regulation in Maryland: Working Paper: Hospice Services - Summary and Analysis of Public Comments and Staff Recommendation* until December 5, 2000. The Commission received comments from the following:

1. Calvert Hospice
2. Coastal Hospice and Home Health Agency
3. Holy Cross Hospital
4. Hospice and Palliative Care of Metropolitan Washington
5. Hospice Network of Maryland
6. Hospice of Garrett County, Inc.
7. Hospice of Queen Anne's, Inc.
8. MedStar Health
9. Shore Home Care Hospice
10. Talbot Hospice Foundation, Inc.

II. Summary of Public Comments on the Staff Recommendation

Written comments on the recommendation in an *Analysis and Evaluation of Certificate of Need Regulation in Maryland: Working Paper: Hospice Services - Summary and Analysis of Public Comments and Staff Recommendation* are summarized below¹:

Calvert Hospice supports Option 1 - Maintain Existing CON Program Regulation. The agency believes that the CON process helps to preserve the highest quality of end-of life hospice care for the terminally ill in the State of Maryland, and states that under the present CON process, hospice care has developed into a "thriving, vibrant service community."

Coastal Hospice and Home Health Agency supports Option 1-Maintain Existing CON Program Regulation. In their written comments, Coastal Hospice stated that deregulation, particularly in rural areas such as the Lower Shore, would seriously erode the ability of existing hospices to continue serving their communities. Coastal Hospice noted that a rural community tends to work together for its members' optimal benefit and for maximum economic efficiency. Should an organization with a more "corporate" style offer hospice services in our area, perhaps with a contract covering a significant number of health care insurance beneficiaries, it would destabilize and undermine an efficient and effective existing system. Coastal Hospice concluded their comments by stating that there is no evidence that upsetting the current infrastructure would benefit Maryland's terminally ill. On the contrary, undermining the local hospices would cause more harm than any conceivable but disputable benefit.

Holy Cross Hospital believes that the ability to continue to provide high quality, cost efficient service would be greatly compromised if the CON process were changed simply to provide increased competition in an industry that is already very competitive. Holy Cross Hospice states that the existing hospice care in the State works very well to met the end-of- life needs of the citizens of Maryland and supports Option 1 - Maintain Existing CON Program Regulation.

Hospice and Palliative Care of Metropolitan Washington disagrees with a recommendation to maintain the existing CON structure in Maryland. The agency states that CON regulation in Maryland has not achieved its intended purpose and benefits. Further,

¹ Copies of the full text of the public comments are provided in Appendix A to this document.

Hospice and Palliative Care of Metropolitan Washington believes that there is no evidence that CON regulation has ensured stability for the hospice industry in Maryland. While Hospice and Palliative Care of Metropolitan Washington agrees that volunteers are an essential part of hospice care, the agency does not believe that the CON requirement ensures a strong volunteer base at existing hospices. Hospice and Palliative Care of Metropolitan Washington states that CON should be deregulated for hospice services. The agency also urges the Commission to consider allowing hospices to serve counties contiguous to jurisdictions in which they have received a CON.

Hospice Network of Maryland urges the Commission to adopt the staff recommendation to retain the existing CON structure in Maryland. The agency believes that the existing CON regulation has afforded great benefits to the development of hospice care in Maryland, and that none of the alternatives formulated by staff will provide the same stability and for end-of-life hospice care for Marylanders. Since there is little or no market incentive for hospice providers to offer services in remote and sparsely populated parts of the state (most providers serving in those areas survive only by virtue of strong community and financial support), any growth in hospice services is more likely to take place in communities where there is already intense competition. According to the Hospice Network, this will further dilute the resources available to the existing programs and could adversely impact their ability to provide high quality services.

Hospice of Garret County Co., Inc. wrote in support of Option 1-Maintain Existing Certificate of Need Program Regulation for hospice services.

Hospice of Queen Anne's, Inc. wrote in support of Option 1-Maintain Existing Certificate of Need Program Regulation for hospice services. Queen Anne's County, as well as the rest of the Eastern Shore is still a rural area and as such presents challenges that will be negatively impacted by deregulation. One of the challenges faced by smaller hospice programs is staff recruitment and retention, especially nurses. According to Hospice of Queen Anne's, additional hospice programs will only intensify this problem. Hospice services a limited population and it is not a market that can be increased by competition.

MedStar Health wrote in support of the staff recommendation to continue the CON model of regulation for hospice services in Maryland.

Shore Home Care Hospice, opposes *any change* in the CON process. The agency states that deregulation of the CON process would: (1) lessen the number of volunteers that serve the hospice population; and (2) decrease community resources.

Talbot Hospice Foundation, Inc. supports retaining the current regulatory system, Option 1, for hospice services in Maryland. The agency believes that one community-based hospice program is able to adequately serve all citizens in need of hospice services. Talbot Hospice Foundation, Inc. believes that if another hospice moves into the area, and competes for the same community dollars, "neither would be able to sustain the needed level of giving in order to remain solvent." Additionally, Talbot Hospice Foundation, Inc. states that because

the availability of nurses and social workers is limited in its area, competition would make it exceedingly difficult for more than one hospice to attract qualified caregivers.

III. Staff Response and Analysis

With the exception of **Hospice and Palliative Care of Metropolitan Washington** that supports deregulation of CON, all of the comments support staff's recommendation that no changes are needed regarding the current CON process for hospice services. Staff continues to believe that Option 1, Maintain Existing Certificate of Need Regulation, provides stability and support for end-of-life hospice care in Maryland. Continued regulation through CON would: (1) ensure that the supply of qualified volunteers could meet the demand of the number of certified hospice providers; and (2) protect hospices from the increasing economic pressures for community donations that would be generated by greater competition.

IV. Staff Recommended Action

Staff recommends that the Commission adopt Option 1, Maintain Existing Certificate of Need Regulation, as the Commission's recommendation to the General Assembly regarding the Certificate of Need requirement for new hospice services. Among the majority of hospice providers as well as the statewide professional association, a strong consensus exists that it would be preferable to continue oversight of market entry through the CON program. As was pointed out in the *Working Paper: Hospice Services*, available hospice services are meeting the needs for end-of-life care in Maryland. Retaining the authority to consider new hospice providers only when additional need warrants will help maintain the stability of this mission-driven, largely non-profit provider network that is heavily dependent on volunteers and community donations. Approval of this recommendation would not preclude working with the Department's Office of Health Care Quality to strengthen State licensure requirements for hospice care.

Appendix A

**Written Public Comments Received on the
Staff Recommendation**